SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 4

CHARLES AUGUSTUS DIXON,
Petitioner,

vs.

CLINTON T. DUFFY, Warden, San Quentin Prison

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITIONER'S BRIEF

Franklin C. Stark,
Counsel for Petitioner.

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No. 79

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CLINTON T. DUFFY, WARDEN, SAN QUENTIN PRISON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF PETITIONER

Opinion Below

Petitioner's application below for a writ of *habeas corpus* was denied without opinion and without requiring the State to answer.[1]

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[1] Prior to the filing of the petition for habeas corpus in the Supreme Court of California, petitioner had filed two petitions in the lower California courts setting forth the same grounds as were contained in the petition to the State Supreme Court. Both were denied without opinion and without requiring the State to answer. The first was denied by the Superior Court of California in and for the County of Marin, the county in which petitioner is imprisoned, on or about July 27, 1950. The second was denied by the District Court of Appeal, the intermediate appellate court for California, on or about September 12, 1950 (R. 1).

Jurisdiction

The Supreme Court of the State of California denied the petition for a writ of *habeas corpus* on November 9, 1950, two justices thereof voting for issuance of the writ (R. 33). The petition for issuance of a writ of certiorari by this Court was filed on January 13, 1951 and was granted on May 28, 1951.

The jurisdiction of this Court is invoked under the terms of 28 U. S. C. Sec. 1257(3). The federal questions sought to be reviewed were raised in the petition for a writ of *habeas corpus* in the Supreme Court of the State of California (R. 1, 24-29, 15), and that Court passed upon those questions by its denial of the petition. *Smith* v. *O'Grady*, 312 U. S. 329, 331.

A petition for a writ of *habeas corpus* is recognized in California as the proper remedy to attack collaterally a judgment of conviction which has been obtained in violation of fundamental rights under the federal constitution. *People* v. *Adamson*, 34 Cal. (2d) 320, 327, 210 P. 2d 13. The violation of fundamental constitutional rights may be reached by *habeas corpus*, although the issue might have been raised on appeal. *In re Wells*, 35 Cal. (2d) 889, 892, 221 P. 2d 947, 949; *In re Bell*, 19 Cal. (2d) 488, 493-495, 122 P. 2d 22, 25-27; *In re Byrnes*, 26 Cal. (2d) 824, 827, 161 P. 2d 376, 377; *In re Seeley*, 29 Cal. (2d) 294, 296, 298, 176 P. 2d 24, 26; *In re McVickers*, 29 Cal. (2d) 264, 273, 176 P. 2d 40, 46. See *In re Swain*, 34 Cal. (2d) 300, 302, 209 P. 2d 793, 795.

Questions Presented

1. Whether or not the Fourth Amendment prohibits the use in a state court of evidence obtained by federal officers through a search and seizure in violation of its provisions.

2. Whether or not the Fourteenth Amendment prohibits the use in a state court of evidence obtained by federal offi-

cers through a search and seizure in violation of the Fourth Amendment, where a federal court has ordered the evidence suppressed and returned to the defendant, and the federal officials in defiance of such order have delivered the evidence to state officials, who, with knowledge of the unlawful seizure and of such order, have based a conviction under a state statute, similar to the federal statute involved, upon such evidence.

Statement of the Case

The relevant facts of the case are set forth in the allegations of the petition for *habeas corpus* filed in the Supreme Court of California.[2] Under California law such allegations must be liberally construed to effect substantial justice. (Cal. Code Civ. Proc. [Deering, 1949] § 452). The petition for *habeas corpus* was denied without requiring the State to answer and without giving petitioner an opportunity to prove his allegations. The allegations thereof must accordingly be taken as true for the purpose of this review. See *Williams* v. *Kaiser*, 323 U. S. 471.

Applying the foregoing rules, it appears that in the morning of Friday, November 19, 1948, two plain-clothesmen of the San Francisco Police Department forcibly entered petitioner's home at 881 Eddy Street, San Francisco, California, and thereafter identified themselves (R. 2; 30). They had neither a warrant for petitioner's arrest nor a warrant to search his home (R. 2; 30). When petitioner inquired about a search warrant, he was pounced upon, seized, and pummeled by the officers (R. 2). He was then handcuffed, and one of the officers stood over him with a drawn re-

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[2] An opinion of a Federal District Judge (R. 29-33), later referred to, was attached as an Exhibit to the petition, and was impliedly made a part thereof. It was expressly incorporated by reference in the petition for a writ of certiorari (p. 5, lines 18-21). Some of the facts stated are taken from that opinion, appropriate record references thereto being made.

volver, orally threatening him with violence, while the other continued the search of the home (R. 2; 30).

A telephone call was then made by one of the officers from petitioner's home to the United States Secret Service. Two secret service agents, Burns and Giovannetti, came to the apartment about a half hour later in response to this call (R. 2-3; 30). They were also without warrant of any kind (R. 3; 30). They were admitted by one of the police officers and a secret conference ensued in another room from that in which petitioner was then being held (R. 2-3).

The federal officers then approached petitioner, told him he was under arrest, and asked him to sign a waiver of his legal rights against unlawful search and seizure (R. 3; 30). Prior to the arrest and search there was no evidence that defendant had committed a felony so as to constitute probable cause for arresting him without a warrant (R. 31). They told him that if he did not sign the waiver, one of them could leave and procure a warrant within a very short time, and that it "would then go harder on Petitioner, and that Petitioner's wife would also be arrested and confined to a Prison as Petitioner's conspirator" (R. 3; 31). Petitioner thereupon signed the waiver, told them where most of the articles which were later seized could be found, and the federal officers then completed the search and seized the materials which became the basis of the prosecutions to which reference will hereafter be made (R. 29-30).

Defendant was then taken by the federal officers to the office of the secret service (R. 3). He was there further threatened with the imprisonment of his wife if he did not sign a confession implicating him in the charges of photographing United States obligations and of making and possessing counterfeit plates of such obligations (R. 3). Petitioner was throughout this period in actual physical pain and a state of mental confusion. He signed the docu-

ment prepared for him without being given an opportunity to read it (R. 3). This occurred in about mid-afternoon of that same day (R. 3).

Petitioner was then taken to the San Francisco City Jail where he was booked under the charge of "enroute to the United States Secret Service" (R. 3). He was held without any formal charge, benefit of bail or legal counsel until in the afternoon of the following Monday, November 22, when he was taken before a United States Commissioner for a preliminary hearing (R. 3; 32). At that time, and upon the advice of Burns, petitioner waived a preliminary hearing (R. 3).

On about December 1, 1948, a United States Federal Grand Jury returned an indictment against petitioner, charging him with unlawful possession of two film photographic negatives of a Federal Reserve Note and the execution of three copper plates in the likeness of plates designed for the printing of Government obligations (R. 3-4; 29).

Thereafter, on about January 6, 1949, the United States District Court for the Northern District of California, through Federal District Judge Dal M. Lemmon, sustained petitioner's motion to suppress the seized evidence, and the photographs taken by the officers (R. 33). The seized evidence was ordered by the Court to be returned to petitioner (R. 33). The Court found that petitioner's consent to the search and seizure was clearly obtained by coercion and was no consent at all (R. 31-32). The motion to suppress the confession was denied without prejudice, inasmuch as its admissibility might be later determined either at the trial or at a pre-trial conference (R. 32-33).

The order of the Federal District Court suppressing the seized evidence, and requiring its return to the petitioner, was not obeyed (R. 4-5; 29).

On about January 24, 1949, the United States Attorney

filed a *nolle prosequi* in the case and petitioner was ordered released from custody (R. 4). One of the two state police officials who had initially broken into petitioner's home appeared at the county jail in San Francisco where petitioner was then being held, and upon petitioner's release, petitioner was shackled by the officer and taken to the city jail where he was re-booked and charged with violation of California Penal Code (Deering, 1949) § 480[3] (making and possessing counterfeiting dies or plates) (R. 4).

The seized evidence was not returned to petitioner, but was delivered by the federal officials directly to state officials, for use in prosecution of the state offense (R. 4; 29).

On about February 3, 1949, petitioner was indicted by the state grand jury under the state statute above referred to, upon the basis of the seized evidence presented by the District Attorney (R. 4). Thereafter, upon a plea of "not guilty", petitioner was tried in the Superior Court of the State of California in and for the City and County of San Francisco. Petitioner's motion in that court to suppress the seized evidence was denied, the court ruling in effect that the order of the federal court did not apply in the state court (R. 4-5). Petitioner was found guilty of the offense charged upon the basis of the seized evidence and the confession above referred to, and was sentenced to from one to fourteen years in the State Prison at San Quentin, California (R. 4-5). He is presently serving this sentence (R. 5).

Petitioner was ignorant of the fact that California law requires as a condition to appeal, that a notice of appeal

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[3] "§ 480. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or in counterfeiting gold-dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed."

be filed within ten days of judgment (R. 1; Rule 31 of Rules on Criminal Appeals, Cal. Penal Code [Deering, 1949], page 917), and thereby lost his right to appeal.

The state trial was conducted with full knowledge of both the Superior Court and the District Attorney that the evidence presented had been seized by federal officials, had been ordered suppressed and returned to petitioner, and that this order had been disobeyed (R. 28-29). It may reasonably be inferred that the state trial was but a part of a plan between federal and state officials to make use of the seized evidence in order to convict petitioner of counterfeiting, irrespective of the illegal search and seizure by the federal officials, and in defiance of the order of the Federal District Court suppressing it and ordering its return to petitioner.

Specification of Errors to Be Relied On

The Supreme Court of the State of California erred:

1. In holding that the Fourth Amendment did not, and in failing to hold that it did, prohibit the use in a state court of evidence obtained by federal officers through a search and seizure in violation of its provisions.

2. In holding that the Fourteenth Amendment did not, and in failing to hold that it did, prohibit the use in a state court of evidence obtained by federal officers through a search and seizure in violation of the Fourth Amendment, where a federal court had ordered the evidence suppressed and returned to the defendant, and the federal officials in defiance of such order had delivered the evidence to state officials, who, with knowledge of the unlawful seizure and of such order, had based a conviction under a state statute, similar to the federal statute involved, upon such evidence.

3. In denying the petition for a writ of *habeas corpus*.

Argument

I. THE FOURTH AMENDMENT PROHIBITS THE USE IN A STATE COURT OF EVIDENCE OBTAINED BY FEDERAL OFFICERS THROUGH A SEARCH AND SEIZURE IN VIOLATION OF ITS PROVISIONS. PETITIONER HAS BEEN DENIED HIS CONSTITUTIONAL RIGHTS UNDER THIS AMENDMENT.

The Fourth Amendment of the Constitution of the United States provides that "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . ."

It is a fundamental law, of course, that the Fourth Amendment does not apply to searches and seizures by state officers. *National Safe Deposit Co.* v. *Stead*, 232 U. S. 58. It does not follow from this, however, that the states have no duty to enforce the Fourth Amendment in those situations where federal officers, rather than state officers, unreasonably search and seize, and their conduct is called into question in state tribunals. For it is unreasonable searches and seizures by federal officers at which the constitutional guaranty is directed, and that unlawful conduct is the evil proscribed, no matter what court may be involved.

The "Constitution shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby" (Art. VI, sec. 2). It follows that a state court is bound, equally with a federal court, to protect the people against violations of the Fourth Amendment by federal officials. Being so bound, the state court has the same duty that the federal court has to bar from evidence matters obtained by federal officers in violation of the Fourth Amendment. "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution." *Mooney* v. *Holohan*, 294 U. S. 103, 113.

This Court has never had occasion to pass upon the duty of a state court to exclude evidence seized by federal officers in violation of the Fourth Amendment.

In *Weeks* v. *United States*, 232 U. S. 383, this Court held that a federal court was required to exclude evidence obtained by federal officers in a search and seizure which violated the Fourth Amendment. In *Wolf* v. *Colorado*, 338 U. S. 25, this Court held that a state court was not required to exclude evidence obtained in a search and seizure by state officers which violated the Fourteenth Amendment.

There is no sufficient reason why the reach of the Fourth Amendment should vary with the particular tribunal in which evidence is sought to be used. On the contrary, there are compelling reasons of logic and policy which dictate a holding that the character of the tribunal, that is, federal or state, is immaterial, and that the Fourth Amendment binds state and federal tribunals alike to exclude evidence seized by federal officers in violation of its command.

First, the wrong to the individual is in each instance identical. He is not complaining of a federal search and seizure in one instance, and a state search and seizure in the other. He complains of a federal search and seizure in both instances. It is the federal "knock on the door" which is the evil throughout. The individual has a right, grounded on the Fourth Amendment, to be free from all unreasonable searches and seizures by federal officers. This right demands a uniform remedy, else "desirable uniformity in adjudication of federally created rights could not be achieved." *Brown* v. *Western Railway of Alabama*, 338 U. S. 294, 299. What has been elsewhere said concerning "federally-created rights", and, conversely of "state-created rights," is by analogy equally applicable here. *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 367; *Guaranty Trust Co.* v. *York*, 326 U. S. 99; *Erie R. Co.* v. *Tompkins*, 304 U. S. 64.

Second, the Fourth Amendment should be liberally construed to prevent the impairment of the protection extended. *Grau* v. *United States*, 287 U. S. 124, 128; *Gouled* v. *United States*, 255 U. S. 298, 304. A construction of that Amendment which does not restrain in all courts the use of evidence secured by federal officers in violation of its mandate is a strict construction. It is not the liberal construction required by the decided cases to secure the fundamental liberties there protected.

> "A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance." *Boyd* v. *United States*, 116 U. S. 616, 635.

Third, violations of the Fourth Amendment can be effectively prevented only by barring from evidence those matters secured by federal officers through its violation. Such was the holding in the *Weeks* case:

> "If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution." 232 U. S. 383, 393.

This ruling in the *Weeks* case was not "derived from the explicit requirements of the Fourth Amendment; . . . [but] was a matter of judicial implication. Since then it has been frequently applied and we stoutly adhere to it." *Wolf* v. *Colorado*, 338 U. S. 25, 28. It was not the desire to protect anyone from a federal prosecution which prompted this judicial implication in *Weeks*. Its roots were rather in the recognition of a need for a militant remedy to protect the people against unreasonable searches and seizures by federal officers. Such searches and seizures are no less

federal because the fruits thereof are offered in a state prosecution. The remedy required to right the wrong is accordingly implied without regard to the character of the prosecution, and with regard only to the constitutional right involved.

The rule of exclusion, while a matter of judicial implication, is nonetheless inherent in the Fourth Amendment itself. It thus rests on a constitutional footing. As stated in *Wolf*, "we have interpreted the Fourth Amendment to forbid the admission of such evidence . . ." 338 U. S. 25, 33. Surely a constitutional remedy cannot be so fickle as to vary with the forum.

Fourth, a failure to recognize that the fruits of an unlawful search and seizure by federal officers can no more be used in state than in federal courts must inevitably lead to artifices and shams whereby those federal officers who violate the Fourth Amendment may indirectly use such fruits via the medium of a state court. The facts of the instant case illustrate one such instance, and speak for themselves of the lawlessness and contempt for right which are bred thereby. Here a federal court had branded the search and seizure by federal officers as unlawful, and had ordered the suppression and return of the evidence seized. Instead of complying with the order, the federal officials in direct contempt thereof delivered the evidence to state officials for use in a prosecution under a state counterpart of the federal law involved. With full knowledge of the character of the search and seizure and of the order of suppression and return, the state officials have received the evidence and used it as the basis for a conviction in the state court.

This Court has universally condemned all schemes and artifices by which federal officials have sought by indirection to accomplish what *Weeks* prevented their doing di-

rectly. *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385; *Gambino* v. *United States*, 275 U. S. 310; *Nardone* v. *United States*, 308 U. S. 338. No different result should be permitted where, as here, federal officials schemed to obtain a conviction, upon the basis of suppressed evidence, under a state counterfeiting statute, after their prosecution under the federal counterfeiting law had soured by reason of their lawless conduct.

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court, but that it shall not be used at all." *Silverthorne Lumber Co.* v. *United States*, 251 U. S. at 392.
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> "It is true that the troopers were not shown to have acted under the direction of the Federal officials in making the arrest and seizure. But the rights guaranteed by the 4th and 5th Amendments may be invaded as effectively by such co-operation, as by the state officers acting under direction of the Federal officials." *Gambino* v. *United States*, 275 U. S. at 316.
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> "To forbid the direct use of methods thus characterized but to put no curb on their full indirect use would only invite the very methods deemed 'inconsistent with ethical standards and destructive of personal liberty.'" *Nardone* v. *United States*, 308 U. S. at 340.

While the question here presented has never been determined in this Court, it has been decided by the highest courts of several States. In *State* v. *Rebasti*, 306 Mo. 336, 267 S. W. 858, the problem was before the Supreme Court of Missouri. There the state officers, after arresting the defendant, turned the matter over to federal narcotic officers who caused the search of a safety deposit box in violation of the Fourth Amendment. In a prosecution in the state court, evidence based on the fruits of the search

was used by the prosecution. The conviction thus obtained was reversed, and the cause remanded, the Court saying:

"The restriction of the Fourth and Fifth Amendments to the federal Constitution apply only to federal officers. The like restrictions in the state Constitution apply only to state officers. When a case arises in a federal court, and a state officer, as a witness, is asked to give evidence discovered by him in an unreasonable search, and the provisions of the federal Constitution are invoked in objection to his testimony, the court always holds that he may testify, because the restrictions of the federal Constitution do not apply to him.

"Likewise, in a state court, when a federal official is offered as a witness, and is asked to testify to some facts which he discovered by an unreasonable search, and the state Constitution is cited in objection, his evidence is held competent because the restrictions of the state Constitution do not apply to him. But when a federal officer is offered as a witness in a state court, and his evidence is objected to because discovered in violation of the federal Constitution, no case is cited where it is held admissible.

"Such constitutional restrictions of federal officers and state officers always apply wherever they are called in question. Suppose a federal officer should make an unreasonable search, and, in doing so, outrage the citizen's rights under the United States Constitution. Can it be said that the unlawful act of the officer could become lawful because of the court in which it is questioned? Suppose the injured citizen should sue him in the state court for damage done in violation of his constitutional rights, and the officer, in defense, should plead that, although he acted unlawfully, the plaintiff had no right to prove it in a state court. Does anyone suppose the plea would be good?

"In this case the federal officer violated the constitutional rights of the defendant, and violated the constitutional restrictions upon his own behavior as a federal officer. Had the case been pending in the federal court, he could not have testified, because his act in procuring his information was unlawful. His case, however, is pending in the state court, and it is contended that he may testify because his act was lawful. By that theory his act becames lawful or unlawful, not because of its quality, but because of the court which decides the question. He can bring his misdemeanor to a state court, and there have his lawless disregard of his official duty appraised as a meritorious performance.

"Numerous cases are cited in support of the opposite view, where it is said that the amendments to the federal Constitution are intended to limit the powers of the national government alone, and do not affect the powers of the state governments. This is construed by the prosecution to mean that the restrictions of the national government do not affect state courts. But the cases cited do not so hold. Where the opinions in such cases hold that the Fourth and Fifth Amendments to the federal Constitution operate upon the federal government only, and not upon the state government, they mean, of course, the agents of the federal government. If those amendments are intended to restrain the actions of federal officers, why should it ever be held that under certain conditions they do not restrain them?

"The case of People v. Adams, 176 N. Y. loc. cit. 356, 68 N. E. 636, 63 L. R. A. 406, 98 Am. St. Rep. 675, is cited, where it is said that the Fourth and Fifth Amendments to the Constitution of the United States do not apply to actions in the state courts. That statement is purely obiter. The facts in the case do not warrant any such statement of the law. In no case has it ever been held, so far as I can dis-

cover, that the unlawful act of a federal officer becomes lawful when brought into question in a state court, or that the evidence of a federal official, which would be held incompetent in the federal court on account of the restrictions of the Fourth and Fifth Amendments, becomes competent when offered in a state court.

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"The only safe and sound construction of the situation is to say that when a federal officer violates the constitutional restriction upon his conduct, so as to make evidence procured in such violation incompetent, that it is incompetent everywhere offered." *State* v. *Rebasti*, 306 Mo. 336, 267 S. W. 858, 861-862.

Accord:[4]

Walters v. *Commonwealth*, 199 Ky. 182, 250 S. W. 839;
State v. *Arregui*, 44 Idaho 43, 254 P. 788;
State v. *Hiteshew*, 42 Wyo. 147, 292 P. 2;
See also, *Little* v. *State*, 171 Miss. 818, 159 So. 103.

The case now before this Court is an even stronger case than the *Rebasti* case. Here there was not only a violation of the Fourth Amendment by federal officers, but a violation of a federal court order as well, an order designed to implement the constitutional safeguard and to give to the defendant the very protection the Court in *Weeks* held to be the constitutional command. It is no answer to say, as does respondent in his opposition to the petition for cert (Resp. Br., p. 3), that the state court and its officials were not a

[4] Compare *Terrano* v. *State*, 59 Nev. 247, 91 P. 2d 67; *Gaines* v. *State*, 95 Tex. Cr. R. 368, 251 S. W. 245, 248, pet. for cert. dis. by stip. 263 U. S. 728; *State* v. *Gardner*, 77 Mont. 8, 249 P. 574; *Johnson* v. *State*, 155 Tenn. 628, 299 S. W. 800. See also, *People* v. *Harmon*, 89 C.A. (2d) 55, 200 P. (2d) 32, and *Benson* v. *State*, 149 Ark. 633, 233 S. W. 758, where the problem was present but not discussed.

party to the federal court proceeding. The aid and assistance given by them to the federal officials in the violation of the federal court's order was as much a punishable contempt as was the disobedience of the federal officials themselves. Cf. *In re Lemmon*, 166 U. S. 548; *Seaward* v. *Peterson*, 1 L. R. Ch. Div. (1897) 545.

II. THE FOURTEENTH AMENDMENT PROHIBITS THE USE IN A STATE COURT OF EVIDENCE OBTAINED BY FEDERAL OFFICERS THROUGH A SEARCH AND SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT, UNDER THE CIRCUMSTANCES HERE PRESENTED.

The minimal standards assured by the due process clause are not met by the use in a state prosecution of evidence obtained by federal officers in violation of the Fourth Amendment, and by them delivered to state officials who have knowledge of the unlawful search and seizure involved and of a federal court order suppressing the evidence and ordering its return to petitioner.

This is not a situation in which state officers, acting alone, have violated petitioner's privacy against arbitrary intrusion, so that the state may remand him "to the remedies of private action and such protection as the internal discipline of the police, under the eyes of an alert public opinion, may afford." *Wolf* v. *Colorado*, 338 U. S. 25, 31.

This is a situation in which federal officers are guilty of intrusion into petitioner's home and seizure of his effects. Against them, the state affords petitioner no adequate or effective remedy, and a prohibition against the use of the evidence is required to afford him due process. Cf. *Moore* v. *Dempsey*, 261 U. S. 86. "There are, moreover, reasons for excluding evidence unreasonably obtained by the federal police which are less compelling in the case of police under state or local authority. The public opinion of a community can far more effectively be exerted against

oppressive conduct on the part of police directly responsible to the community itself than can local opinion, sporadically aroused, be brought to bear upon remote authority pervasively exerted throughout the country." *Wolf* v. *Colorado*, 338 U. S. 25, 32-33.

Not having afforded petitioner an adequate or effective remedy, the state has not provided petitioner with that which is "implicit in the concept of ordered liberty," and accordingly has denied him due process of law. *Palko* v. *Connecticut*, 302 U. S. 319, 325.

Conclusion

For the foregoing reasons, the denial of petitioner's application for a writ of *habeas corpus* should be set aside, and the Court below should be directed to issue the writ.

Respectfully submitted,

FRANKLIN C. STARK,
801 Financial Center Building,
Oakland, California,
Attorney for Petitioner.

STARK & CHAMPLIN,
801 Financial Center Building,
Oakland, California,
Of Counsel.

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